

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RUCHELL GILBERT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. C18-0798-JCC

ORDER

This matter comes before the Court on Petitioner's 28 U.S.C. § 2255 motion to vacate or correct his sentence (Dkt. No. 1) and motion for appointment of counsel (Dkt. No. 2).

Before directing service and answer to a habeas corpus petition, the Court must determine whether the motion, the files, and the records of the case "conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b). The Court has conducted such a preliminary review, and the record does not conclusively show that the prisoner is entitled to no relief.

The Court also GRANTS Petitioner's motion for appointment of counsel (Dkt. No. 2). While there is no general right to have counsel appointed in cases brought under 28 U.S.C. § 2255, unless an evidentiary hearing is required, *see Terrovona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988), the Court may exercise its discretion to appoint counsel for a financially eligible individual where the "interests of justice so require." 18 U.S.C. § 3006A. The Court previously ordered appointment of counsel in Defendant's underlying criminal case in order to assist him in

1 filing a section 2255 petition. *See United States v. Ruchell Gilbert*, Case No. CR12-0237-JCC,
2 Dkt. No. 1053 (W.D. Wash. Feb. 16, 2018). Considering the record, the Court finds it
3 appropriate for current counsel, Jennifer Kaplan, to represent Defendant during the pendency of
4 this habeas proceeding.

5 Accordingly, the Court ORDERS as follows:

6 (1) The Clerk shall direct a copy of this order to Petitioner.

7 (2) If not previously accomplished, electronic posting of this order and petition shall
8 effect service upon the United States Attorney of copies of the 2255 motion and of all documents
9 in support thereof.

10 (3) Within forty-five days after such service, the United States shall file and serve an
11 answer in accordance with Rule 5 of the rules governing section 2255 cases. As part of such
12 answer, the United States should state its position as to whether an evidentiary hearing is
13 necessary, whether there is any issue as to abuse or delay under Rule 9, and whether Petitioner's
14 motion is barred by the statute of limitations.

15 (4) The United States shall note the answer for consideration on the fourth Friday
16 after it is filed. Petitioner may file and serve a reply to the answer no later than that noting date.

17 (5) Jennifer Kaplan is appointed as counsel of record for Petitioner throughout this
18 civil proceeding.

19 DATED this 11th day of June 2018.

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23 John C. Coughenour
24 UNITED STATES DISTRICT JUDGE
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